



U.S. Department  
of Transportation

Pipeline and  
Hazardous Materials  
Safety Administration

Office of  
Chief Counsel

**Hazardous Materials Safety  
Law Division**

3 83284

400 Seventh Street, S.W., Room 8417  
Washington, D.C. 20590-0001  
Phone: (202) 366-6318  
Fax: (202) 366-7041  
E-mail: jackie.cho@dot.gov

**NOTICE OF PROBABLE VIOLATION**

PHMSA Case No. 05-0473-SD-SO

Date Issued:

JAN - 9 2006

Docket No. PHMSA-2006-23582 -1

Respondent: Carboline Co.  
350 Hanley Industrial Ct.  
St. Louis, MO 63144-1599  
Attention: Richard M. Wilson, President

Carboline Co.  
6058 Boatrock Boulevard  
Atlanta, GA 30336  
Attention: Richard M. Wilson, President

No. of Alleged Violations: 1

Maximum Possible Assessment: \$ 32,500

Total Proposed Assessment: \$ 3,375 (Includes a \$1,125 reduction for corrective action)

The Office of Chief Counsel of the Pipeline and Hazardous Materials Safety Administration (PHMSA) alleges that you (the Respondent named above) violated certain provisions of the Federal Hazardous Materials Transportation Law, 49 U.S.C. § 5101 *et seq.*, and/or the Hazardous Materials Regulations (HMR), 49 C.F.R. Parts 171 - 180. PHMSA sets forth the specific allegations in Addendum A to this Notice.

What is the maximum and minimum civil penalty that PHMSA can assess? Federal law sets a civil penalty of not more than \$50,000 and a civil penalty of not less than \$250 for each violation of the Federal Hazardous Materials Transportation Law or the HMR committed on or after August 10, 2005, and no more than \$32,500 and no less than \$275 for each violation occurring before August 10, 2005 but after October 1, 2003 (49 U.S.C. § 5123(a)(1)). Furthermore, for violations committed on or after August 10, 2005, if a person's violation of the HMR "results in death, serious illness, or severe injury . . .

or substantial destruction of property” the maximum civil penalty is \$100,000 (49 U.S.C. § 5123(a)(2)); and if the violation concerns training the minimum civil penalty is \$450 (49 U.S.C. § 5123(a)(3)). Each day of a continuing violation constitutes a separate violation for which the maximum penalty may be imposed (49 U.S.C. § 5123(a)(4)).

What factors does PHMSA consider when proposing and assessing a civil penalty? Federal law requires PHMSA to consider certain factors when proposing and assessing a civil penalty for a violation of Federal Hazardous Materials Transportation Law or the HMR. Please refer to Addendum B to this Notice for more information concerning these factors.

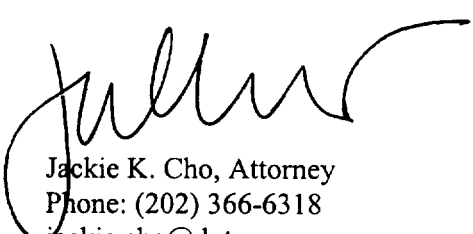
When is my response due? You must respond within thirty (30) days from the date that you receive the Notice (49 C.F.R. § 107.313(a)). **PHMSA encourages you to submit your response by e-mail or fax** when possible. PHMSA may extend the 30-day period for your response if you ask for an extension, and show good cause, within the original 30-day period (49 C.F.R. §107.313(c)). Please contact the undersigned attorney if you have any questions.

What are my response options? You may respond to this Notice in any of three ways:

- (1) Admit the alleged violations and pay the proposed assessment (49 C.F.R. § 107.313(a)(1));
- (2) Send an informal response, which can include a request for an informal conference (49 C.F.R. § 107.313(a)(2)); or
- (3) Request a formal hearing (49 C.F.R. § 107.313(a)(3)).

PHMSA provides information on these options in Addendum B to this Notice and the Office of Chief Counsel’s homepage (<http://rspa-atty.dot.gov>). PHMSA explains its procedures for assessing civil penalties and imposing compliance orders in 49 C.F.R. §§ 107.307 through 107.331.

What happens if I fail to respond? You waive your right to contest the allegations made in Addendum A to this Notice if you fail to respond within thirty (30) days of receiving it (or by the end of any extension). Also, the Chief Counsel may make a finding of fact consistent with the allegations in this Notice and assess an appropriate civil penalty if you fail to respond within the applicable time frame.



Jackie K. Cho, Attorney  
Phone: (202) 366-6318  
[jackie.cho@dot.gov](mailto:jackie.cho@dot.gov)

Enclosures: Addendum A  
Addendum B  
Addendum C  
Case Exhibits

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

## **SPECIFIC ALLEGATIONS**

### Probable Violation No. - 1

Respondent offered hazardous materials for transportation in commerce in quantities requiring the transport vehicle to display a placard when Respondent failed to develop and implement a security plan, in violation of 49 C.F.R. §§ 171.2(a), 172.800(b), and 172.802(a) and (b).

### Factual Allegations/Averments

A. On June 14, 2005, Respondent offered 1,342 pounds of Paint, 3, UN 1263, PG II, for transportation in commerce.

B. On the date provided in paragraph A above, Respondent had not developed and implemented a security plan.

- Please see Inspection/Investigation Report Number 05462069 at pages 2-3, and the exhibits that accompany this report, which are incorporated herein.

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## **FACTS ALREADY CONSIDERED (UNDER 49 C.F.R. § 107.331) IN SETTING PROPOSED PENALTIES**

### Prior Violations of the Hazardous Materials Regulations:

PHMSA increases proposed penalties when Respondent has committed a prior violation of the Federal Hazardous Materials Transportation Law or the HMR within the last six years, as determined through a civil penalty case, criminal case, or ticketing process (49 C.F.R. § 107.331(d)). More specifically, “the general standards for increasing a baseline proposed penalty on the basis of prior violations are . . . (1) for each prior civil or criminal enforcement case –25% increase over pre-mitigation recommended penalty, and (2) for each prior ticket–10% increase over pre-mitigation recommended penalty” (49 C.F.R. Part 107, Subpart D, Appendix A, Section IV, E).

PHMSA’s records do not contain any prior violations by Respondent and PHMSA did not consider any prior violations in determining the proposed assessment for the violation in this Notice.

Corrective Action:

An important purpose of PHMSA's enforcement program is to bring the regulated community into compliance with the Hazardous Materials Regulations, and to promote ongoing efforts by that community to maintain compliance. In determining the final penalty assessment, PHMSA considers documented evidence of actions taken by a Respondent to correct violations and ensure that they do not recur (49 C.F.R. § 107.331 (g)).

In its September 19, 2005 letter, Respondent described and documented its corrective action as follows:

Probable Violation No. 1 – Respondent submitted evidence of its Hazardous Materials Security Plan in accordance with regulatory requirements. Based on this corrective action, the proposed civil penalty is reduced for this probable violation by \$1,125 (25%).

Financial Status

Under 49 C.F.R. §107.331 (e) and (f), the proposed penalty may be reduced if Respondent demonstrates that it is unable to pay that penalty, or if payment of the proposed penalty would affect Respondent's ability to continue in business. Respondent's poor financial condition may be a basis for reducing the proposed penalty; a healthy financial condition is *not* a basis for increasing the penalty.

PHMSA has no information that indicates that Respondent is unable to pay the proposed penalty. If Respondent believes it lacks the ability to pay the proposed penalty or that the proposed penalty will affect Respondent's ability to continue in business, Respondent should submit a current balance sheet (certified if possible) or other evidence of its assets and liabilities.

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**TOTAL CIVIL PENALTY PROPOSED**

Probable Violation	Maximum Possible Penalty	Baseline Penalty	Increase for Priors	Corrective Action	Proposed Penalty
1	\$32,500	\$4,500	0	\$1,125	\$3,375
<b>TOTAL</b>	\$32,500	\$4,500	0	\$1,125	<b>\$3,375</b>

DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION

How do I respond to this Notice of Probable Violation (Notice)?

You may respond to this Notice in any of three ways:

- (1) Pay the proposed assessment (49 C.F.R. § 107.315);
- (2) Send an informal response, which can include a request for an informal conference (§ 107.317); or
- (3) Request a formal hearing (§ 107.319).

How do I pay the proposed assessment?

You pay the proposed assessment by:

- (1) Sending a wire transfer, through the Federal Reserve Communications System (Fedwire), to the U.S. Treasury account (49 C.F.R. § 89.21(b)(3). Addendum C contains the instructions for sending wire transfers. Questions concerning wire transfers should be directed to: Financial Operations Division (AMZ-300), ATTN: Shelley Willis, Federal Aviation Administration, Mike Monroney Aeronautical Center, P.O. Box 25082, Oklahoma City, OK 73125 (Telephone No. 405-954-8893).

Or

- (2) Sending a certified check or money order if the penalty amount is \$10,000 or less. The certified check or money order must be payable to the "U.S. Department of Transportation" and must be mailed to the Chief, Financial Operations Division, Attn: Shelley Willis, Federal Aviation Administration, Mike Monroney Aeronautical Center, AMZ-300, P.O. Box 25082, Oklahoma City, OK 73125.

Or

- (3) Using a credit card via the Internet. To pay electronically with a credit card, visit the following website address and follow the instructions:

<https://www.pay.gov/paygov/>

Where do I send my response?

You must address your informal response or formal hearing request to the attorney who issued the Notice at the following address:

Pipeline and Hazardous Materials Safety Administration  
Office of the Chief Counsel (PHC-10)  
Room 8417  
U.S. Department of Transportation  
400 Seventh Street, S.W.  
Washington, D.C. 20590-0001

When is my response due? (§ 107.313)

You must respond to the Notice within thirty (30) days of the date you receive it. The attorney who issued the Notice may extend the 30-day period for your response if you ask for an extension, and show good cause, within the original 30-day period.

What happens if I do not respond? (§ 107.313)

If you fail to respond to the Notice within thirty (30) days of receiving it (or by the end of any extension), you will waive your right to contest the allegations made in Addendum A to the Notice. In addition, the Chief Counsel will issue a default Order finding the facts as alleged in the Notice and assessing the civil penalty as outlined within that notice.

May I propose a compromise offer? (§ 107.327)

Yes. At any time before an order is issued and referred to the Attorney General for collection, you may propose to compromise a civil penalty case by submitting a specific compromise offer amount to the attorney handling the case (§ 107.327). The Chief Counsel may also propose a compromise.

If a compromise is agreeable to all parties, the attorney handling the case will forward a compromise agreement to you for signature. This document will outline the terms of the joint agreement and you must return a signed original to the attorney handling the case within 30 days. After this agreement has been returned it will be signed by the assigned attorney and presented to the Chief Counsel with a request that the Chief Counsel adopt the terms of that agreement by issuing a Compromise Order (49 C.F.R. § 107.327(a)(1)). The terms of the agreement constitute an offer of compromise until accepted by the Chief Counsel. When you agree to a compromise, you give up your right to appeal the order issued by the Chief Counsel.

What should I include in my informal response? (§107.317)

Your informal response must contain written explanations, information or arguments that respond to the allegation(s), the amount of the proposed civil penalty, or the terms of a proposed compliance order. Provide complete documentation of your explanations and arguments. No specific format is required for an informal response.

May I request an informal conference? (§107.317)

Yes. You may request an informal conference as part of your informal response. Please describe the issues you want to discuss during the conference. After receiving your request, the attorney handling the case will contact you to arrange the conference. Normally the conference will be held by telephone, and the attorney handling the case and the inspector who conducted the compliance inspection will participate in the conference.

What happens after I submit an informal response to the Notice?

We will hold an informal conference if you have asked for one. Based on the Notice, the evidence supporting the Notice, any written explanations, information and documentation that you provide, and matters presented at a conference, the Chief Counsel decides the case. The Chief Counsel may issue an order finding all or some of the violation(s) alleged in the Notice or may withdraw all or some of the alleged violation(s). If the Chief Counsel finds violation(s), the order will assess a civil penalty.

How do I appeal an order? (§ 107.325)

You may appeal an order to PHMSA's Administrator.

How do I request a formal hearing? (§ 107.319)

You must request a formal hearing within 30 days of the date that you receive the Notice. If you are granted an extension of time to respond to the Notice, you must submit a formal hearing request by the end of the extended time period. If you do not request a formal hearing within the specified time, you will waive your right to a formal hearing.

Your request for a formal administrative hearing must include the following:

- (1) The name and address of the respondent and any other person submitting the request;
- (2) A statement of which allegations of violations are not in dispute; and
- (3) A description of the issues that you will raise at the hearing. (The Administrative Law Judge will decide whether issues not raised in the request may be raised at the hearing.)

After receiving a request for a hearing that complies with these requirements, the Chief Counsel will request an Administrative Law Judge from the DOT Office of Hearings to preside over the hearing. Once an Administrative Law Judge is assigned, all further matters in the proceeding will be conducted by the Administrative Law Judge. Either you or PHMSA may appeal the decision of the Administrative Law Judge to PHMSA's Administrator.

How does PHMSA determine if I have committed a violation?

This is a civil penalty case and PHMSA uses the "knowingly" standard, which is defined in the Federal hazardous materials transportation law (See 49 U.S.C. 5123(a)(1)), in all civil penalty cases. The standard for a violation is similar to "negligence." After considering all the available information (including the additional information you provide in your response to the Notice), PHMSA must find either that (1) you had "actual knowledge" of the facts giving rise to the violation, or (2) you had "imputed knowledge," of the facts giving rise to the violation, in that a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge. PHMSA does not need to find that you actually knew about, or intended to violate, requirements in the Federal hazardous material transportation law or the HMR.

What factors does PHMSA consider when proposing and assessing a civil penalty? (§ 107.331)

PHMSA considers the following factors when proposing and assessing a civil penalty for a violation of the regulations:

- (1) The nature and circumstances of the violation(s);
- (2) The extent and gravity of the violation(s);
- (3) The degree of your culpability;
- (4) Your history, if any, of prior offenses;



- (5) Your ability to pay the penalty;
- (6) The effect of the penalty on your ability to continue in business;
- (7) The size of your business, and
- (8) Other matters as justice may require.

The nature and the timeliness of any corrective action you take to prevent future violations of a similar nature will be considered under item No. 8. However, you must submit documented evidence of that corrective action to the PHMSA attorney. If you have submitted documented evidence regarding any of these factors during PHMSA's investigation of the alleged violation(s), and that documentation is referenced in the Notice or accompanying Inspection/Investigation Report, you do not need to resubmit it.

Under the Small Business Regulatory Enforcement Fairness Act (SBREFA), PHMSA must consider the rights of small entities in enforcement actions. PHMSA's hazardous materials enforcement program has been designed to consider small businesses and the penalties that PHMSA proposes and assesses are generally considered appropriate for small businesses. PHMSA takes into consideration the size of the company when proposing and assessing a civil penalty.

However, special consideration may not be given to a small business if:

- (1) The small business has not corrected its violation(s) within a reasonable time;
- (2) The small business has committed one or more prior violations of the HMR;
- (3) The violations involve willful conduct;
- (4) The violations pose serious threats to health, safety or the environment; or
- (5) The small business has not made a good faith effort to comply with the law.

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about Federal agency enforcement actions. Our objective is to ensure a fair regulatory enforcement environment.

You have a right to contact the Small Business Administration's national Ombudsman at 1-888-REG-FAIR (1-888-734-3247) or [www.sbs.gov/ombudsman](http://www.sbs.gov/ombudsman) regarding the fairness of the

compliance and enforcement activities by this agency.

The Pipeline and Hazardous Materials Safety Administration strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about compliance and enforcement activities.

Where can I find more information on how PHMSA handles hazardous materials enforcement cases?

A more detailed discussion of these procedures is in 49 C.F.R. §§ 107.301 through 107.333. These procedures are also on the Office of the Chief Counsel's home page at <http://phmsa-attt.dot.gov>."

**INSTRUCTIONS FOR ELECTRONIC FUNDS TRANSFER TO  
THE FEDERAL AVIATION ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION**

1. <b><u>RECEIVER'S ABA NO.</u></b> 021030004	2. <b><u>TYPE SUBTYPE</u></b> (provided by sending bank)
3. <b><u>SENDING BANK ARB NO.</u></b> (Provided by sending bank)	4. <b><u>SENDING BANK REF NO.</u></b> (Provided by sending bank)
5. <b><u>AMOUNT</u></b>	6. <b><u>SENDING BANK NAME</u></b> (Provided by sending bank)
7. <b><u>RECEIVER NAME:</u></b> TREAS NYC	8. <b><u>PRODUCT CODE</u></b> (Normally CTR, or as provided by sending bank)
9. <b><u>BENEFICIARY (BFN) - AGENCY LOCATION CODE</u></b> <b><u>BNF=/ AC 69-14-0001</u></b>	10. <b><u>REASONS FOR PAYMENT</u></b> Example: PHMSA - Payment for Case # / Ticket Number/Pipeline Assessment number

**INSTRUCTIONS:** You, as sender of the wire transfer, must provide the sending bank with the information for Block (1), (5), (7), (9), and (10). The information provided in blocks (1), (7), and (9) are constant and remain the same for all wire transfers to Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

**Block #1 - RECEIVER ABA NO.- "021030004"**. Ensure the sending bank enters this nine-digit identification number; it represents the routing symbol for the U.S. Treasury at the Federal Reserve Bank in New York.

**Block #5 - AMOUNT** - You as the sender provide the amount of the transfer. Please be sure the transfer amount is punctuated with commas and a decimal point. EXAMPLE; \$10,000.00

**Block #7 - RECEIVER NAME - "TREAS NYC."** Ensure the sending bank enters this abbreviation; it must be used for all wire transfer to the Treasury Department.

**Block #9 - BENEFICIARY- AGENCY LOCATION CODE - "BNF=/AC-69140001"**  
Ensures the sending bank enters this information. This is the Agency Location Code for Pipeline and Hazardous Materials Safety Administration, Department of Transportation.

**Block #10 - REASON FOR PAYMENT - "AC-payment for PHMSA Case # / To**  
ensure your wire transfer is credited properly, enter the case number/ticket number or Pipeline Assessment number, and country."

**Note:** - A wire transfer must comply with the format and instructions or the Department cannot accept the wire transfer. You, as the sender, can assist this process by notifying, at the time you send the wire transfer to the General Accounting Division (405) 954-8893.



## Inspection / Investigation Report No. 05462069

U.S. Department of Transportation  
Pipeline and Hazardous Materials Safety Administration  
Office of Hazardous Materials Enforcement

**Inspection Location:**

Carboline Co.  
6058 Boatrock Boulevard  
Atlanta, GA 30336

**Principal Office (if different):**

Carboline  
350 Hanley Industrial Court  
St. Louis, MO 63144-1599

**Contact:** Marquis James, Service Center  
Manager

**Phone:** 404-349-6208

**Fax:** 404-349-3254

**Contact:** Jill Peeler, Transportation Manager

**Phone:** 314-644-1000

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**Type of Inspection:** SHIPPER INSPECTION  
(GENERAL)

**Result:** ENFORCEMENT REPORT

**Inspector:** BUNN, ROBERT  
**Code:** DHM-46.2  
**Title:** HAZARDOUS MATERIALS  
ENFORCEMENT SPECIALIST

**Signature:**

**Inspector #2:**  
**Code:**  
**Title:**

**Supervisor Name:** John P. Heneghan  
**Title:** Chief, Southern Region

**Authorization Date:** 9/19/2005

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### Summary of Inspection

On July 22, 2005 Hazardous Materials Enforcement Specialist Robert Bunn conducted a compliance inspection at Carboline Company, 6058 Boatrock Boulevard, Atlanta, GA 30336. Carboline ships prepackaged paints and paint related materials which are regulated as hazardous. Mr. Marquis James, Service Center Manager, represented the company and provided documentation as requested.

During the inspection a violation concerning lack of a security plan was documented.

A letter of corrective action (exhibit 4) was received from Ms. Jill Peeler, Transportation Manager for Carboline Company, St. Louis, MO which states that a security plan has been provided for the Atlanta service center which includes a risk assessment and which addresses personnel security, unauthorized access and en route security, in accordance with regulatory requirements. Associated training was also provided to service center employees.

The corrective action appears to fully address the violation.

**Violation Number:** 1

**Number Discovered:** 1

**49 CFR Section:**

171.2(a) and (b)

172.800(b)

**Exhibit:** One through four

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**Violation Description:**

Offering for transportation in commerce a quantity of hazardous materials requiring placarding, Paint, 3, UN 1263, PG II, while failing to develop a security plan, in violation of 49 CFR §§ 171.2(a) and (b) and 172.800(b).

**Evidence Summary:**

On July 22, 2005 Hazardous Materials Enforcement Specialist Robert Bunn conducted a compliance inspection at Carboline Company, 6058 Boatrock Boulevard, Atlanta, GA 30336. Carboline ships prepackaged paints and paint related materials which are regulated as hazardous. Mr. Marquis James, Service Center Manager, represented the company and provided documentation as requested.

The inspector completed the Security Inspection Report with Mr. Nelson which states that the company has no written security plan (exhibit 2). On page three of the report he certified his responses by signature.

Upon request, Mr. James provided a copy of bill of lading number 01S7052422 dated June 14, 2005 (exhibit 3) which lists 1342 pounds of Paint, 3, UN 1263, PG II shipped from Carboline to Allied Painting, Elizabeth, NJ.

49 CFR, § 172.800(b) states, "By September 25, 2003, each person who offers for transportation in commerce or transports in commerce one or more of the following hazardous materials must develop and adhere to a security plan for hazardous materials that conforms to the requirements of this subpart:...(7) A quantity of hazardous material that requires placarding under the provisions of subpart F of this part."

Section 172.802(b) states, in part, "The security plan must be in writing and must be retained for as long as it remains in effect. Copies of the security plan, or portions thereof, must be available to the employees who are responsible for implementing it".

An exit briefing (exhibit 1) was held with Mr. James at the conclusion of the inspection.

A letter of corrective action (exhibit 4) was received from Ms. Jill Peeler, Transportation Manager for Carboline Company, St. Louis, MO which states that a security plan has been provided for the Atlanta service center which includes a risk assessment and which addresses personnel security, unauthorized

access and en route security, in accordance with regulatory requirements. Associated training was also provided to service center employees.

The corrective action appears to fully address the violation.

**Additional Information Pertaining to the Inspection:**

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**Exhibit Summary**

<b>Evidence</b>		<b>Obtained From</b>		
<b>No.</b>	<b>Description</b>	<b>Name, Title</b>	<b>Company</b>	<b>City, State</b>
1	Exit Briefing	Robert P. Bunn, Senior Hazardous Materials Enforcement Specialist	U. S. DOT/OHME/SO	Atlanta, GA
2	Security Inspection Report	Robert P. Bunn, Senior Hazardous Materials Enforcement Specialist	U. S. DOT/OHME/SO	Atlanta, GA
3	Bill of lading	Marquis James, Service Center Manager	Carboline Co.	Atlanta, GA
4	Letter of corrective action	Jill Peeler, Transportation Manager	Carboline Co.	St. Louis, MO





U.S. Department of  
Transportation

Pipeline and  
Hazardous Materials  
Safety Administration

Office of Hazardous  
Materials Enforcement  
Southern Region

U.S. DOT / PHMSA / OHME (DHM-46)  
233 Peachtree Street NE, Suite 602  
Atlanta, Georgia 30303  
(404) 832-1140 Fax: (404) 832-1168

05462069

### EXIT BRIEFING

COMPANY NAME CARBOLINE CO - DATE 7/22/05  
ADDRESS 6058 BOAT ROCK BOULEVARD  
ATLANTA, GA 30336

#### NAME OF INDIVIDUALS RECEIVING THE BRIEFING:

Name: MARQUIS JAMES Title: SVC. CTR. MGR.  
Name: \_\_\_\_\_ Title: \_\_\_\_\_  
Name: \_\_\_\_\_ Title: \_\_\_\_\_

This has been a compliance inspection conducted in accordance with Title 49 U.S.C. Section 5121(c). This exit briefing addresses only the areas noted, and it is not a finding of general compliance in any other areas covered by the Hazardous Materials Regulations that were subject to the inspection.

During the course of the inspection the following probable violations of 49 CFR and/or quality control items were noted:

#### PROBABLE VIOLATIONS

Section: 171.200, 172.800(b)  
Explanation:

NO SECURITY PLAN.

EX: DIS TO 5 2422 PL# , DATED 6/14/05 LISTS  
1342 lbs. HAZMAT. PER MR JAMES, NO  
SECURITY PLAN HAS YET BEEN DEVELOPED.

Section:  
Explanation:

X REQUESTED DOT REGISTRATION.

U.S. DOT/PHMSA/OHME/SOUTHERN REGION  
REPORT NUMBER: 05462069  
EXHIBIT NUMBER: \_\_\_\_\_  
PAGE NUMBER: 1 OF 2



U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Hazmat Enforcement  
Southern Region, 233 Peachtree Street NE, Suite 602, Atlanta, GA 30303 (404)832-1140 Fax: (404)832-1168

**This document is not a final report.** The information gathered at this inspection and any probable violations noted will be reviewed prior to finalizing the report. Probable violation(s) may be removed or others may be added during this review. In addition, quality control items may be revised to become probable violations during this review.

Upon determination that a probable violation exists, the Associate Administrator for Hazardous Materials Safety is authorized to impose certain sanctions, including warning letters, compliance orders, and civil penalties. In addition, court actions, including injunctive or criminal proceedings, may be initiated. Title 49 U.S.C. Sections 5123 and 5124 provide for civil and criminal penalties for violation of the Hazardous Materials Regulations.

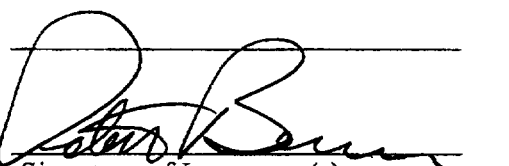
A civil penalty of not more than \$32,500.00, but not less than \$275.00, per violation may be imposed through administrative proceedings initiated by the Office of Chief Counsel of the Research and Special Programs Administration. When a criminal violation has been determined by a court, a fine, or imprisonment for not more than 5 years, or both, may be imposed for each violation.

The inspector does not determine which sanction, if any, may be imposed and cannot provide information concerning what proceedings will be initiated or sanctions imposed.

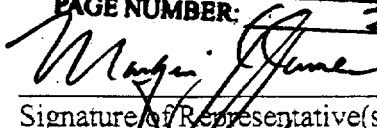
**Documentation of corrective action submitted in writing to the inspector within 30 days of the inspection may be considered for mitigation should the sanction imposed result in the issuance of a notice proposing a civil penalty. However, any documented corrective action would not eliminate or preclude the initiation of a civil penalty proceeding, a finding of violation, or assessment of a civil penalty.**

Our objective is to ensure a fair regulatory enforcement environment. If you feel you have been treated unfairly or unprofessionally, you may contact John O'Connell at 202-366-4700, or e-mail us at [OHME-HQ@dot.gov](mailto:OHME-HQ@dot.gov). You also have a right to contact the Small Business Administration's National Ombudsman at 1-888-REGFAIR or [www.sba.gov/ombudsman](http://www.sba.gov/ombudsman) regarding the fairness of the compliance and enforcement activities by this agency. The Research and Special Programs Administration strictly forbids retaliatory acts by its employees. As such, you should feel confident that you will not be penalized for expressing your concerns about compliance and enforcement activities.

I certify that I received the above briefing as it appears on this form. I understand that by signing this form I am in no way expressing agreement with its contents. I am only acknowledging that I have reviewed it and have received a copy.

  
Signature of Inspector(s)

Date: 7/22/05

U.S. DOT/PHMSA/OHME/SOUTHERN REGION  
REPORT NUMBER: 05462068  
EXHIBIT NUMBER: 1  
PAGE NUMBER: 2 OF 2  
  
Signature of Representative(s)

Date: 7/22/05

**INVESTIGATIVE NOTES**  
**COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES**



**PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**  
**SECURITY INSPECTION REPORT**

Inspection Date: 7/22/05

Facility Name and Address:

CARBOLINE Co.  
6058 BOAT ROCK BLVD  
ATLANTA, GA 30336

Company Officials Interviewed:

MARQUIS JAMES

Title:

SERVICE CTR. MGR.

1. Does the company offer any of the following for transportation: [§ 172.800(b)]

- ☐ a) A highway route controlled quantity of a Class 7 material.
- ☐ b) More than 55 pounds of a Division 1.1, 1.2, 1.3 in a motor vehicle, rail car, or freight container.
- ☐ c) More than 1 liter per package, of a material poison by inhalation, Zone A.
- ☐ d) A quantity of a hazardous material in a bulk packaging (> 3,500 gallons for liquids/gas, 468 cubic feet for solids).
- ☐ e) >5,000 lbs. (gw) of one hazard class in non-bulk packaging for which placarding of a vehicle, rail car or freight container is required.
- ☒ f) A select agent or toxin listed in 42 CFR, Part 73.
- ☒ g) A quantity of hazardous materials that requires placarding
- ☐ h) None of Above: Security Plan is not required, though Security Awareness Training is still required to be conducted (See page 2, Security Training)

2. Does the company have a written security plan? No

3. Has it been approved by another Federal agency [172.804]? N/A

4. If yes, name of agency \_\_\_\_\_ and date approved \_\_\_\_\_

5. Does the plan include a security assessment of possible transportation security risks [172.802]? \_\_\_\_\_

6. Does the plan include measures to address the assessed risk(s)? \_\_\_\_\_

7. Does the plan address personnel security? \_\_\_\_\_

8. What method is in place to confirm information provided by employees hired for positions that involve access to or handling of materials covered by the security plan? \_\_\_\_\_

U.S. DOT/PHMSA/OHMS/SOUTHERN REGION  
REPORT NUMBER: 05462008  
EXHIBIT NUMBER: 21  
PAGE NUMBER: 1

**INVESTIGATIVE NOTES**  
**COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES**

**INVESTIGATIVE NOTES**  
**COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES**

9. Is the company adhering to its personnel security plan?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

10. Does the plan address unauthorized access?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

11. Does the company adhere to the plan to prevent unauthorized persons to gain access to hazmat covered by the plan or transport conveyances being prepared for transportation?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

12. Does the plan address en route security?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

13. Does the company adhere to its en route security plan from origin to destination, including private/contract/common carrier?

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

**SECURITY TRAINING**

14. Has the company conducted security awareness training (SAT)? \*

\_\_\_\_\_ ?  
\_\_\_\_\_ (call MS Peeler)

15. Does the security awareness training include a component on how to recognize and respond to possible security threats?

16. Has each HM employee, hired after March 25, 2003, received SAT within 90 days of hire?

\_\_\_\_\_

\_\_\_\_\_

17. Has the company conducted in-depth security training (plan specific) for all HM employees by December 22, 2003?

18. Does the in-depth training program include the following:

- a. Company security objectives? \_\_\_\_\_
- b. Specific security objectives? \_\_\_\_\_
- c. Employee responsibilities? \_\_\_\_\_
- d. Actions to take in the event of a security breach? \_\_\_\_\_
- e. Organizational security structure? \_\_\_\_\_

U.S. DOT/PHMSA/OHME/SOUTHERN REGION  
REPORT NUMBER: 05462069  
EXHIBIT NUMBER: 2  
PAGE NUMBER: 2 OF 2

**INVESTIGATIVE NOTES**  
**COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES**

**INVESTIGATIVE NOTES  
COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES**

19. Has the company created and retained records of employee security training? ?

Additional Notes

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[\* Note: A company is not required to test or retain records concerning the new security plan training requirement until an employee's next scheduled retraining or within the 3 year Hazmat Employee training cycle.]

This inspection report assesses your compliance with our Security Plan regulations (49 CFR §§ 172.704 (Training), 172.800 (Purpose and Applicability), 172.802 (Components of a security plan), and 172.804 (Relationship to other Federal requirements)). **This inspection report and any comments made during this evaluation do not constitute an endorsement or approval of your security program in whole or in part. Do not send us a copy of your Security Plan as a part of corrective action. If we need a copy of your Security Plan we will specifically request it in writing.**

I hereby certify that the above responses are true to the best of my knowledge.

Persons Interviewed:

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Signature \_\_\_\_\_ Title \_\_\_\_\_ Date \_\_\_\_\_

Inspector(s):

Signature *Robert B...* Title *MSP* Date *7/22/05*

Signature *Mary-Jane...* Title *Center Manager* Date *7/22/05*

Nothing Follows.            (Inspector's Initials)

The following website may be helpful in the development and administration of security plans:

[http://hazmat.dot.gov/hmt\\_security.htm](http://hazmat.dot.gov/hmt_security.htm)

**U.S. DOT/PHMSA/OHME/SOUTHERN REGION**  
**REPORT NUMBER: 0546200**  
**EXHIBIT NUMBER: 2**  
**PAGE NUMBER: 2 OF 2**

**INVESTIGATIVE NOTES  
COMPILED AND RETAINED FOR ENFORCEMENT PURPOSES**

## STRAIGHT BILL OF LADING — SHORT FORM

ORIGINAL -- Not Negotiable

Page 1(1)



SHIP DATE 06-14-2005

Shipper's No. 01S7052422

Shipper's Number Must Appear on Freight Bill

INTERNATIONAL SALES ORDER NUMBER : 0

BILL OF LADING NUMBER : 242011

CHEMTREC EMERGENCY HAZARD RESPONSE INFORMATION NO. 800-424-9300

See attached for Emergency Information.

TO:  
Allied Ptg/PALLET JACK REQD \*\*\*\*  
Under NJ Turnpike/7am-4pm delv  
864 Anna St  
call b4 609-381-1403 Sidney  
Elizabeth, NJ  
07201

FROM:  
Carboline Co. - Atlanta  
6058 Boatrock Boulevard  
Atlanta, GA  
30336

THIRD PARTY BILLING ADDRESS :

404 349 6208  
3254 fax

CUSTOMER P.O. NO. 3860	LOCATION CODE 440	CARRIER Con-Way Central Express(CCX)	MARK HERE PREPAID OR COLLECT Prepaid
SHIPPER'S NO. 01S7052422	CUSTOMER NO. 001059000	FREIGHT TYPE 002 Prepay and Do Not Add	Freight charges are prepaid unless marked collect.

PACKAGING				HM	DESCRIPTION	WEIGHT	CLASS
PAILS	CTNS.	DRUMS	BAGS				
20	0	0	0	X	Paint,3,UN1263,PGII, NMFC 149980 sub 2	1342	55
0	0	0	0		48 X 40	45	
0	0	0	0				
20	0	0	0		Total no. of pieces : 20 PALLET JACK REQD	1387	

Qty of Pallets: 1

Total Weight in LBS.:

U.S. DOT/PHMSA/OSHA/SOUTHERN REGION  
REPORT NUMBER: 05462069  
EXHIBIT NUMBER: 3  
PAGE NUMBER: 1 OF 1

For Freight Collect Shipments: If this shipment is to be delivered to the consignee, without recourse on the consignor, the consignor shall sign the following statement: The carrier may decline to make delivery of this shipment without payment of freight and all other lawful charges.

Carboline Company

(Signature of Consignor)

☐ C.O.D Shipment

C.O.D. Amount 0.00

REMIT C.O.D TO  
CARBOLINE CO.  
P.O. Box 931942  
Cleveland, OH 44193

\* PREPAID FRT SEND BILL & CC BOL TO  
Carboline Company C/O ITS Traffic  
28915 Clemens Road, Suite 200  
Westlake, Ohio 44145

RECEIVED, subject to individually determined rates or contracts that have been agreed upon in writing between that carrier and shipper, if applicable, otherwise to the rates, classifications and rules that have been established by the carrier and are available to the shipper, on request; the property described above, in apparent good order, except as noted (contents and condition of contents of packages unknown) marked, consigned, and destined as shown below, which said carrier agrees to carry to destination, if on its route, or otherwise to deliver to another carrier on the route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the terms and conditions of the Uniform Bill of Lading set forth in the National Motor Freight Classification 100-X and successive issues. The shipper hereby certifies that he is familiar with all the terms and conditions of the said bill of lading, and the said terms and conditions are hereby agreed to by the shipper and accepted for himself and his assigns.

(Mail or street address of consignee — For purpose of notification only.)

\*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight".

\*NOTE—Where the rate is dependant on value, shippers are required to state specifically in writing the agreed or declared value of the property. The agreed or declared value of the property is hereby specifically stated by the shipper to not exceeding \$ \_\_\_\_\_ per \_\_\_\_\_

SHIPPER CERTIFICATION: This is to certify that the above named materials are properly classified, described, packaged, marked and labeled, and are in proper condition for transportation, according to the applicable regulations of the Department of Transportation.

SHIPPER Carboline Company

Per

C. Beal

Date

6/14/05

CARRIER CERTIFICATION: Carrier acknowledges receipt of packages and required placards. Carrier certifies emergency response information was made available and/or carrier has the DOT emergency response guidebook or equivalent document in the vehicle.

CARRIER

Per

CSF 2007  
1711 7821

Date

6-14-05

Package Nos.



350 Hanley Industrial Court, St. Louis, MO 63144  
Telephone: 314-644-1000 ext. 2283  
Fax: 314-644-4684

# Fax

To: Robert Burns @ US DOT	From: Jill Peeler
Fax: 404-832-1168	Pages: 5
Phone: 404-832-1144	Date: September 19, 2005
Re: 7/22/05 DOT Audit of Carboline Atlanta Service Center	

Robert -


In response to your call and follow-up of the July 22, 2005, DOT audit of the Carboline Atlanta service center, here is a copy of our corporate DOT Hazardous Material Registration.

We have also provided and trained the Atlanta employees on our Security Plan. Following are copies of the three "Employee Sign-off Sheets" as verification of the training.

Our Security Plan assesses the security risk, outlines personnel security, addresses unauthorized access, and addresses en route security. If you would like a copy of this plan at any time, I will be happy to forward it to you.

Thank you for your consideration: please let me know if you require any further information to assist in mitigating further action.

Regards,

  
Jill Peeler  
Transportation Manager

/jp Enclosures

U.S. DOT/PHMSA/OHME/SOUTHERN REGION  
REPORT NUMBER: 05462069  
EXHIBIT NUMBER: 7  
PAGE NUMBER: 1 OF 5

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
PIPELINE AND HAZARDOUS MATERIALS SAFETY ADMINISTRATION**



**HAZARDOUS MATERIALS  
CERTIFICATE OF REGISTRATION  
FOR REGISTRATION YEAR(S) 2005-2006**

**Registrant:** CARBOLINE COMPANY  
Attn: JILL PEELER  
350 HANLEY IND CT  
SAINT LOUIS, MO 63144-1599

This certifies that the registrant is registered with the U.S. Department of Transportation as required by 49 CFR Part 107, Subpart G.

This certificate is issued under the authority of 49 U.S.C. 5108. It is unlawful to alter or falsify this document.

**Reg. No:** 062105 002 018N

**Issued:** 6/22/2005

**Expires:** 6/30/2006

**Record Keeping Requirements for the Registration Program**

The following must be maintained at the principal place of business for a period of three years from the date of issuance of this Certificate of Registration:

- (1) A copy of the registration statement filed with PHMSA; and
- (2) This Certificate of Registration

Each person subject to the registration requirement must furnish that person's Certificate of Registration (or a copy) and all other records and information pertaining to the information contained in the registration statement to an authorized representative or special agent of the U. S. Department of Transportation upon request.

Each motor carrier (private or for-hire) and each vessel operator subject to the registration requirement must keep a copy of the current Certificate of Registration or another document bearing the registration number identified as the "U.S. DOT Hazmat Reg. No." in each truck and truck tractor or vessel (trailers and semi-trailers not included) used to transport hazardous materials subject to the registration requirement. The Certificate of Registration or document bearing the registration number must be made available, upon request, to enforcement personnel.

For information, contact the Hazardous Materials Registration Manager, PHM-60, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 400 Seventh Street SW, Washington, DC 20590, telephone (202) 366-4109.

**U.S. DOT/PHMSA/CHM/SOUTHERN REGION**  
**REPORT NUMBER:** 0548200  
**EXHIBIT NUMBER:** 4  
**PAGE NUMBER:** 2 OF 5



SEP-19-2005 MON 12:26 PM CARBOLINE

CARBOLINE CO.

FAX NO. 3146444617

TRANSPORTATION

FAX NO. 3146444617

P. 03

0001

P. 02

P. 8

SEP 19 2005 12:26 PM

5 Personnel Security:

5.1 Security Training

5.2 Training Course Objective

5.2.1 Site Security Plan Training - This training satisfies all Federal requirements and subparts regarding security issues pertaining to this industry. (49 CFR part 1)

5.2.2 Carboline will ensure that all employees are provided with thorough security training. All employees will be trained in, and are expected to be familiar with, the company's security plans and procedures. At a minimum, this training will include detailed instruction regarding our:

5.2.3 Overall security objectives;

5.2.4 Individual employee security responsibilities;

5.2.5 Specific security procedures; and

5.2.6 The organization's security structure.

5.2.7 Training on the plan shall be documented. The documentation sheet shall have at least the following verbiage in the following categories:

Employee Sign-off Sheet

I acknowledge I have been informed, and given a copy, of the company's Hazardous Materials Security Plan. I have read and understand the procedures contained therein, and I accept the policy as a working document that I will support and follow in my daily work.

Employee's Signature:

Date:

Supervisor's Signature:

Date:

Corporate Safety Director's Signature:

Date:

U.S. DOT/PHMSA/OHME/SOUTHERN REGION  
REPORT NUMBER: 05462069  
EXHIBIT NUMBER: 4  
PAGE NUMBER: 3 OF 5

Hug DE 05 12:39p

5 Personnel Security:

5.1 Security Training

5.2 Training Course Objective

5.2.1 Site Security Plan Training - This training satisfies all Federal requirements and subparts regarding security issues pertaining to this industry. (49 CFR part 1)

5.2.2 Carboline will ensure that all employees are provided with thorough security training. All employees will be trained in, and are expected to be familiar with, the company's security plans and procedures. At a minimum, this training will include detailed instruction regarding our:

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<b>Employee Sign-off Sheet</b>	
I acknowledge I have been informed, and given a copy, of the company's Hazardous Materials Security Plan. I have read and understand the procedures contained therein, and I accept the policy as a working document that I will support and follow in my daily work.	
Employee's Signature: <i>[Signature]</i>	Date: 8/08
Supervisor's Signature: <i>[Signature]</i>	Date: 8/15/01
Corporate Safety Director's Signature: <i>[Signature]</i>	Date: 9/19/01

U.S. DOT/PHMSA/OTHE/SOUTHERN REGION  
 REPORT NUMBER: 05462069  
 EXHIBIT NUMBER: 4 OF 5  
 PAGE NUMBER: 4 OF 5

Aug 20 12:38P

## 5 Personnel Security:

## 5.1 Security Training

## 5.2 Training Course Objective

5.2.1 Site Security Plan Training - This training satisfies all Federal requirements and subparts regarding security issues pertaining to this industry. (49 CFR part 1)

5.2.2 Carboline will ensure that all employees are provided with thorough security training. All employees will be trained in, and are expected to be familiar with, the company's security plans and procedures. At a minimum, this training will include detailed instruction regarding on:

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Employee Sign-off Sheet	
I acknowledge I have been informed, and given a copy, of the company's Hazardous Materials Security Plan. I have read and understand the procedures contained therein, and I accept the policy as a working document that I will support and follow in my daily work.	
Employee's Signature: <i>[Signature]</i>	Date: 8/1/05
Supervisor's Signature: <i>[Signature]</i>	Date: 8/1/05
Corporate Safety Director's Signature: <i>[Signature]</i>	Date: 8/19/05

U.S. DOT/PHMSA/OHME/SOUTHERN REGION

REPORT NUMBER: 05462069

EXHIBIT NUMBER: 4

PAGE NUMBER: 5 OF 5